

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Communications Assistance for Law	)	ET Docket No. 04-295
Enforcement Act and Broadband Access and	)	
Services	)	RM-10865

**COMMENTS OF THE UNIVERSITY OF MICHIGAN  
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

**I. Summary**

The University of Michigan (“University”) submits these reply comments in response to the Further Notice of Proposed Rulemaking adopted in the above-captioned docket.<sup>1</sup> The purpose of these comments is to support an exemption process or limited compliance category for educational entities that, like the University, have a clear record of support for law enforcement authorities and the capability and commitment to provide law enforcement assistance capabilities consistent with CALEA and the Commission’s recommendations. The University supports the comments filed by the Higher Education Coalition and submits this reply to amplify several points based on its own experience and circumstances.

**II. Discussion**

The University supports the Commissions re-evaluation of telecommunications services to ensure court-ordered electronic surveillance remains robust. However, there is no demonstrated need to bring Universities, or the private networks that interconnect them, under

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<sup>1</sup> *Communications Assistance for Law Enforcement Act and Broadband Access and Services*. First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-295, FCC 05-153 (rel. Sept. 23, 2005) (“*Order*”).

the umbrella of CALEA regulation because (1) the University already meets in substance the needs of law enforcement and (2) the costs of CALEA compliance would critically undermine the research, learning and teaching mission of the University. We therefore respectfully request the FCC make clear that the private networks operated by colleges, universities, and research institutions are exempt from CALEA. If the Commission maintains that higher education institutions should become subject to CALEA the extraordinary financial burden favors a limited compliance tier or an incremental approach to compliance.

**A. Congress Did Not Intend CALEA To Apply To Higher Education Networks.**

With an 18-month compliance deadline an exemption or extension is urgently necessary. An exemption would be most appropriate because when CALEA (47 U.S.C. Sections 1001-1010) was enacted in 1994, Congress specifically excluded from coverage information service providers such as Internet Service Providers, for purposes of compliance with CALEA. By now suggesting through the NPRM that CALEA applies to Internet services such as those provided by the University, the original intent of CALEA may have been improperly broadened by stating in the *Order*: “To the extent . . . that [such] private networks are interconnected with a public network, either the PSTN or the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA . . . .” *Order* at ¶ 36, n.100. This extension could imply that virtually all networks in the country are subject to CALEA which may not have been Congress’ intent.

Further, the University does not make its network facilities generally available to the public and is not a “common carrier for hire” under CALEA section 102(8). Accordingly, any interpretation of CALEA now suggesting that CALEA specifically applies to educational entities may exceed the scope originally envisioned by Congress.

Therefore, the University respectfully requests that the Commission review the compliance framework outlined in the original CALEA statute and consider an exemption for higher education as part of the outcome of the current NPRM.

**B. The University Continues To Assist Law Enforcement**

The University supports law enforcement. The University of Michigan includes three campuses and a large medical center with 54,000 students and 35,000 faculty and staff. The University owns and operates a traditional telephone switch with 35,000 lines. There is 24 hour per day support for telecommunications systems. The University maintains its own law enforcement unit, the University of Michigan Police.

In the middle and late 1990s the University received a handful of wire-tap requests for our traditional telephone system and we complied quickly and completely with each one. Since 2000 no wiretap requests have been received but the commitment to taking all reasonable measures to ensure continued cooperation with any surveillance requests continues.

University history demonstrates that existing procedures are more than adequate to ensure compliance with lawful surveillance requests, in light of both the infrequency of such requests and demonstration of full cooperation. Imposing burdensome new assistance-capability requirements under CALEA may not serve the public's or even law enforcement's best interests.

**C. Application of CALEA To Higher Education Would Impose Significant Burdens On And Divert Funds From The Critical Educational Mission.**

The need for an exemption or extension for higher education is critical. Neither the *Order* itself nor direct discussion with three of the Universities' providers of telecommunications equipment make it clear what the University would need to implement to be CALEA compliant. Specifically, there is no guidance with respect to where CALEA compliant devices must be deployed within the University's diverse networks; no guidance regarding the specific hardware

or software technologies that must be used; and no guidance with respect to how the University must balance access with privacy assurance for those not under investigation and with privacy laws, including federal privacy laws. This is complicated further by the model used in many large public Universities to provide broadband network service. In a community of diverse, autonomous University Units, each Unit is ultimately responsible for their own building network and therefore the designs and equipment types are numerous.

As a result, estimating the full cost of compliance under the revised CALEA *Order* is difficult. However, clearly the costs to comply by May 2007 could be excessive and burdensome. For example, replacing existing switching equipment would likely exceed \$15 million if the requirement were only to replace existing equipment or retrofit existing systems.

More troubling than the need for new equipment itself is the space the equipment is to be placed in. For example, University Residence Halls have just begun a ten-year plan to upgrade electronics to support 100Mbps service and cabling able to support 1Gbps to each room. The upgrade would be implemented more quickly but the closet environment in most of the buildings will not handle the heat load of new electronics. Therefore, each new network upgrade is coupled with building renovation plans. Implementation of CALEA compliance by May 2007 would substantially increase costs and disrupt Residence Hall operations. Construction costs due to implementation by May 2007 might incur an additional cost of \$10 million.

**D. If CALEA Is To Be Applied To Higher Education, The University Supports a Limited Compliance Category.**

In the absence of an exemption for higher education, the University supports a limited compliance category that would address the costs and benefits of CALEA's extension to higher education. Such a limited category could include three components that recognize the important distinctions on the one hand, and commercial broadband service providers on the other.

First, the Commission should reaffirm that CALEA is to be applied only to the public Internet gateway to which the education institutions attach, and not to the internal portions of higher education networks.

Second, education institutions could be asked to meet reasonable assistance capability requirements. The requirements could include:

1. Appointment of a senior employee responsible for ensuring that assistance is provided in accordance with the assistance capability procedures.
2. Defining policies and procedures in accordance with the educational institution's established processes that provide how it will accept and assist lawfully authorized requests for surveillance.
3. Publishing the contact information for those campus officials obliged to be responsive to law enforcement.
4. Confirming compliance with the Commission and/or law enforcement on a reasonably recurring basis.

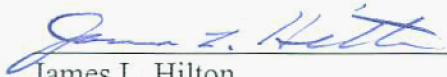
Third, to the extent any educational institution is required to obtain CALEA-compliant equipment pursuant to the revised rule, the University asks that such upgrade or modification be installed in the normal course of any regularly-scheduled institutional upgrade program rather than within the current 18-month "full compliance" mandate. Such a phase-in permits the University – a non-profit, public entity – to address technological upgrades in a systematic way consistent with the University's budget limitations and equipment depreciation schedules. Notably, Congress originally required the federal government "to pay all reasonable costs incurred by industry ... to retrofit existing facilities to bring them into compliance with interception requirements," CALEA legislative History. House Report No. 103-827 at 16, and so

such a phased-in upgrade would not be inconsistent with Congress' vision to decrease or eliminate financial burden under the original CALEA legislation.

### **III. Conclusion**

The University looks forward to remaining a responsive and capable partner to law enforcement. The University hopes the Commission remains committed to providing an appropriate avenue for the University to demonstrate its commitment through an exemption or limited exemption process.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "James L. Hilton", is written over a horizontal line.

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